

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

METROPOLITAN LIFE INSURANCE CO.,  
a foreign insurer,

Plaintiff-In-Interpleader,

v.

ROXANN CLINE, a single woman;  
TERESA E. VALENTINE, individually  
and as guardian for B.R.C.,  
J.W.C., and B.M.C., minor  
children,

Defendants-In-Interpleader.

No. CV-05-3104-FVS

ORDER

TERESA E. VALENTINE, individually  
and a guardian for B.R.C.,  
J.W.C., and B.M.C., minor  
children,

Third Party Plaintiffs,

v.

FIDELITY EMPLOYERS SERVICES CO.,  
LLC,

Third Party Defendant.

**THIS MATTER** comes before the Court pursuant to Federal Rule of Civil Procedure 12(b). Fidelity Employer Services Company, LLC, moves to dismiss Teresa Valentine's third-party claim without prejudice for failure to exhaust administrative remedies. Teresa Valentine is represented by Sarah L. Wixon. Fidelity Employer Services Company, LLC, is represented by Thomas W. McLane.

**BACKGROUND**

Raymond Cline was married to Teresa Valentine until September 26, 2002. On that date, a Decree of Dissolution was entered in state Superior Court. Afterward, Mr. Cline married Roxann Cline. Their marriage lasted until December 15, 2004, when he died. Prior to his death, Mr. Cline was employed by BP Corporation North America, Inc. ("BP"). He had an interest in the BP Employee Savings Plan ("the Plan"). While the plan is administered by BP, Fidelity Employer Services Company, LLC, and its affiliates ("Fidelity") provide record-keeping and administrative services. After Mr. Cline's death, someone distributed the assets in his account to his widow. During August of 2005, Mr. Cline's former wife (Teresa Valentine) submitted a copy of the Decree to Fidelity through her attorney. The Decree was referred to "QDRO Services," which responded to Ms. Valentine's attorney in a letter dated September 20, 2005. The letter states in part:

**Please be advised that Fidelity has no record of ever receiving the . . . Decree of Dissolution prior to your letter.**

**According to our records, the Participant was eligible to be in the . . . Plan(s) but our records indicate that there are no assets/benefits in the account(s) to segregate. Therefore, as there are no assets to be awarded to the Alternate Payee, there will be no review of this order.**

We consider this matter closed.

(Emphasis in original.) Counsel for Teresa Valentine wrote to

1 Fidelity on November 23, 2005. He said that, whether or not Fidelity  
2 and BP had received a copy of the Decree prior to the distribution of  
3 assets, they were on notice of the dissolution and remarriage. Thus,  
4 in his opinion, they had a duty to investigate Mr. Cline's marital  
5 history. On January 13, 2006, Sharon Wheeler responded on behalf of  
6 Fidelity. She, too, insisted that neither Fidelity nor BP had  
7 received a copy of the Decree prior to August of 2005. Nevertheless,  
8 she went on to say:

10 Please be advised that even if the Decree of Dissolution had  
11 been timely submitted to the Plans as alleged, it does not  
12 meet the requirements for qualification under ERISA, the  
13 Code and the QDRO Approval Guidelines and Procedures for the  
14 Plans ("QDRO Guidelines"). Pursuant to the provisions of  
15 these federal statutes and the QDRO Guidelines, a domestic  
16 relations order must contain certain information to effect  
17 an assignment to an alternate payee of a participant's  
18 qualified retirement plans. Because the Decree of  
19 Dissolution fails to qualify as a qualified domestic  
20 relations order, the Plans cannot comply with its terms.  
21 Finally, it should be noted that by its terms, Exhibit 2 of  
22 the Decree of Dissolution does not create any interest in  
23 the Pension Plan for your client, Ms. Valentine.

24 If you or your client possesses any relevant documentation,  
25 please submit it to the Administrator of the Plans.  
26 Additionally, please be advised that under ERISA's claims  
27 appeal process, your client may submit a written request to  
28 the Administrator of the Plans. Please send such  
29 correspondence to: . . . Otherwise, we will consider this  
30 matter closed.

31 (Letter of Sharon Wheeler dated January 13, 2006, at 1-2.) Ms.  
32 Valentine did not seek administrative review. Instead, on March 16,

1 2006, she filed a third-party claim against Fidelity under the  
2 Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C.  
3 §§ 1001 *et seq.* Fidelity moves to dismiss her third-party claim  
4 without prejudice under Rule 12(b) on the ground she failed to exhaust  
5 her administrative remedies.  
6

7 **RULING**

8 A. Rule 12(b) Motion Is Proper

9 Ms. Valentine argues that the Court cannot resolve Fidelity's  
10 motion without looking beyond the pleadings and that the Court may  
11 look beyond the pleadings only if it converts Fidelity's Rule 12(b)  
12 motion to a summary judgment motion. While this is the general rule,  
13 there are exceptions. "[T]he failure to exhaust nonjudicial remedies  
14 that are not jurisdictional should be treated as a matter in  
15 abatement, which is subject to an unenumerated Rule 12(b) motion  
16 rather than a motion for summary judgment." *Wyatt v. Terhune*, 315  
17 F.3d 1108, 1119 (9th Cir.2003) (citations omitted), *cert. denied sub*  
18 *nom. Alameida v. Wyatt*, 540 U.S. 810, 124 S.Ct. 50, 157 L.Ed.2d 23  
19 (2003). The Court may look beyond the pleadings. *Id.* at 119-20.  
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21

22 B. Ms. Valentine Is Asserting A "Contractual" Claim

23 Courts distinguish between an ERISA claim that is based upon a  
24 benefit plan and an ERISA claim that is based upon § 510, 29 U.S.C. §  
25 1140. The former is typically referred to as a "contractual" claim;  
26 the latter is typically referred to as a "statutory" claim. See,

1 e.g., *Madera v. Marsh USA, Inc.*, 426 F.3d 56, 63 (1st Cir.2005).  
2 Ordinarily, a plaintiff must exhaust his administrative remedies  
3 before commencing a contractual claim. *Amato v. Bernard*, 618 F.2d  
4 559, 568 (9th Cir.1980). Ordinarily, he need not exhaust his  
5 administrative remedies before commencing a statutory claim. *Amaro v.*  
6 *Continental Can Co.*, 724 F.2d 747, 752 (9th Cir.1984). Ms. Valentine  
7 characterizes her claim as a statutory claim rather than a contractual  
8 claim. Her characterization of her claim is not supported by the  
9 record. As Fidelity points out, she is alleging that she was  
10 wrongfully denied benefits to which she is entitled under her ex-  
11 husband's plan. "A claim for the wrongful denial of benefits . . . is  
12 not to be treated as a 'statutory' claim, but rather as a  
13 'contractual' one." *Madera*, 426 F.3d at 63. Consequently, Ms.  
14 Valentine must demonstrate that she has exhausted her administrative  
15 remedies unless it would have been futile for her to attempt to do so.  
16 *Amato*, 618 F.2d at 568.

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19 C. Plan Requires Exhaustion of Administrative Remedies

20 Ms. Valentine alleges that the plan does not include a provision  
21 requiring her to exhaust her administrative remedies. Absent such a  
22 provision, she argues, she is not required to do so. In response to  
23 this argument, Fidelity has submitted additional sections of the plan.  
24 One of them states in part, "You can file suit only after you have  
25 exhausted the plan's claims and appeals procedures." (Supplemental  
26

1 Declaration of Clifford York (Ct. Rec. 76), Ex. A-1, at N-19.) In  
2 view of this provision, exhaustion is mandatory.

3 D. Exhaustion Of Administrative Remedies Would Not Have Been  
4 Futile

5 Ms. Valentine argues that exhaustion would have been futile. As  
6 she observes, someone distributed the assets in her ex-husband's  
7 account before August of 2005. Furthermore, both the plan  
8 administrator and Fidelity denied receiving a copy of the Decree  
9 before August of 2005, and Fidelity denied that the Decree was a  
10 Qualified Domestic Relations Order. Although these allegations are  
11 undisputed, Ms. Valentine has failed to establish that exhaustion  
12 would have been futile. Had she appealed, the BP claims and appeals  
13 coordinator could have determined whether BP or Fidelity actually  
14 received a copy of the Decree before August of 2005 and whether the  
15 Decree was a Qualified Domestic Relations Order ("QDRO").

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17  
18 E. Equitable Estoppel Inapplicable

19 In its letter of September 20, 2005, Fidelity stated, in part,  
20 "We consider the matter closed." Ms. Valentine argues that this  
21 statement clearly indicated Fidelity's decision was final and there  
22 was no point in seeking administrative review. Had this been  
23 Fidelity's last communication to Ms. Valentine's attorney, Fidelity  
24 might be equitably estopped from asserting her failure to exhaust  
25 administrative remedies as an affirmative defense. *Cf. Paese v.*  
26

1 *Hartford Life & Accident Ins. Co.*, 449 F.3d 435, 448 (2d Cir.2006)  
2 (beneficiary properly invoked doctrine of equitable estoppel where  
3 insurance company wrote, "*our claim decision is now final as you have*  
4 *exhausted any administrative remedies available to you under the*  
5 *policy*'" (emphasis added by Second Circuit)). However, Fidelity's  
6 letter of September 20th was not its final communication to Ms.  
7 Valentine's attorney. On January 13, 2006, Ms. Wheeler wrote,  
8 "[P]lease be advised that under ERISA's claims appeal process, your  
9 client may submit a written request to the Administrator of the  
10 Plans." Given this statement, Ms. Valentine cannot establish (as she  
11 must) that she waived her administrative remedies because she was  
12 misled into thinking that none were available.  
13  
14

15 **IT IS HEREBY ORDERED:**

16 1. Fidelity's motion to dismiss (**Ct. Rec. 47**) is granted.

17 2. The third-party ERISA claim that Teresa Valentine brought  
18 against Fidelity Employer Services Company, LLC, on her behalf and the  
19 behalf of her children is dismissed without prejudice for failure to  
20 exhaust administrative remedies.  
21

22 **IT IS SO ORDERED.** The District Court Executive is hereby  
23 directed to enter this order and furnish copies to counsel.

24 **DATED** this 24th day of May, 2007.

25 s/ Fred Van Sickle  
26 Fred Van Sickle  
United States District Judge